



Office of the Attorney General

State of Texas

March 31, 1993

DAN MORALES
ATTORNEY GENERAL

Mr. Charles Karakashian, Jr.
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR93-165

Dear Mr. Karakashian:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 17953.

The Texas Department of Public Safety (the "department") received an open records request for

1. All warrants received by the DPS office in Decatur, Texas from any Justice of the Peace or any other authority in Wise County, Texas for a period beginning January 1, 1990, to and including the date of this request (Reference: Open Records Decision Nos. 274, and 127).
2. All traffic citations issued by officers presently working out of the Decatur office of the Department of Public Safety or who have worked out to said office during the period beginning January 1, 1990, and ending on the date of the document (Reference: Open Records Decision No. 127).

You contend the requested information comes under the protection of sections 3(a)(3) and 3(a)(8) of the Open Records Act.

The department received the request for information on October 30, 1992. You requested a decision from this office on November 10, 1992. Consequently, you failed to request a decision within the 10 days required by section 7(a) of the act.

Section 7(a) of the act requires a governmental body to release requested information or to request a decision from the attorney general within 10 days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to

request a decision within 10 days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.*

You have acknowledged to this office that your request for an open records decision was untimely and have accordingly argued that there are compelling reasons for not releasing the requested information.¹ Specifically, you contend that the compelling interest

concerns the interruption of law enforcement activity which complying with [the] request would cause. The activity is the entering of warrants in our Warrant Data Bank system and the serving of these warrants. The interruption would be caused by either delaying the forwarding of the warrants to Communications for entry into the Warrant Data Bank system or by removing the warrant from the warrant file or from the possession of a law enforcement officer trying to serve it.

Section 4 of the Open Records Act provides:

On application for public information to the officer for public records in a governmental body by any person, the officer for public records shall promptly produce such information for inspection or duplication, or both, in the offices of the governmental body. *If the information is in active use or in storage and, therefore, not available at the time a person asks to examine it, the officer for public records shall certify this fact in writing to the applicant and set a date and hour within a reasonable time when the record will be available for the exercise of the right given by this Act.* Nothing in this Act shall authorize any person to remove original copies of public records from the offices of any governmental body. [Emphasis added].

The applicable test for required disclosure is twofold: whether the requested information is collected, assembled, or maintained by a governmental body, and, if so, whether the information falls within one of the specific exceptions to disclosure under section 3(a) of the act. Open Records Decision No. 460 (1987). Although information may be *temporarily* withheld if it is in immediate active use, this simply permits an agency to avoid unreasonable disruption of its immediate business by scheduling a more convenient, but reasonable, time to provide the information. Open Records Decision No. 121 (1976). We view as untenable your contention that

¹This ruling pertains only to those warrants and traffic citations held by the department on October 30, 1992, the date of the open records request.

the requested warrants continue to be in active use after they have been served, entered into the Warrant Data Bank System, and placed in the warrant file. Accordingly, the department may temporarily withhold only those warrants that are in *immediate* active use, provided, however, that the department complies with section 4 of the act by scheduling a reasonably prompt date and time that those warrants will be available.

You also contend that the Open Records Act does not require the department to comply with the request for warrants because to draw up a list of warrants issued from Wise County would necessitate the compiling of information contained in the department's computers. Although it is well-established that the act does not require a governmental body to prepare new information in response to an open records request, *see* Open Records Decision No. 342 (1982), some compilation of information may be required under the act. Attorney General Opinion JM-672 (1987). In Attorney General Opinion JM-672, the attorney general indicated that a minimal computer search may be required for existing information stored in computers. Whether certain programming constitutes the creation of new material, and is therefore not required, must be determined on a case-by-case basis. *Id.* In this instance, however, you inform us that the department currently possesses a computer program that would create a list of warrants out of Wise County. Because the current request does not require the creation of a new computer program, the department may not deny the request on these grounds.²

You have not shown compelling reasons why the requested warrants and citations³ should be withheld. The requested information is presumed to be public and must be released as discussed above.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR93-165.

Yours very truly,



Rick Gilpin
Assistant Attorney General
Opinion Committee

²You state that once a list of the warrants is compiled, "a person would then have to go through the files and pull out those individual warrants . . . [which] would take about three to four hours." If you are concerned about the administrative inconvenience of taking employees away from their other duties, the department may choose to grant the requestor access to all of the warrants in order to compile the information himself. *See, e.g.,* Open Records Decision No. 467 (1987) at 5 - 6.

³You state that the department destroys traffic citations "once the citation is disposed of." We presume that the department has preserved the citations coming within the ambit of the current request. Records that are the subject of a pending open records request must be preserved, despite the legal authority to otherwise destroy them. Open Records Decision No. 530 (1989).

RG/RWP/le

Ref: ID# 17953
ID# 18035
ID# 18038
ID# 18085
ID# 18252
ID# 18351

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